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To amend the Communications Act of 1934 to improve protections against telephone service “slamming” and provide protections against telephone billing “cramming”, to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Ms. COLLINS (for herself, Mr. DURBIN, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to improve protections against telephone service “slamming” and provide protections against telephone billing “cramming”, to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telephone Services
5 Fraud Prevention and Enforcement Act of 1999”.

1 **SEC. 2. CONSUMER PROTECTIONS AGAINST TELEPHONE**
 2 **SERVICE SLAMMING.**

3 (a) IN GENERAL.—Section 258 of the Communica-
 4 tions Act of 1934 (47 U.S.C. 258) is amended to read
 5 as follows:

6 **“SEC. 258. PROTECTIONS AGAINST UNAUTHORIZED**
 7 **CHANGES IN SUBSCRIBER SELECTIONS OF**
 8 **TELEPHONE EXCHANGE SERVICE OR TELE-**
 9 **PHONE TOLL SERVICE.**

10 “(a) PROHIBITION ON UNAUTHORIZED CHANGES.—
 11 No telecommunications carrier or reseller of telecommuni-
 12 cations services shall submit or execute a change of a pro-
 13 vider of telephone exchange service or telephone toll serv-
 14 ice except in accordance with this section and such ver-
 15 ification procedures as the Commission shall prescribe.

16 “(b) VERIFICATION PROCEDURE REQUIREMENTS.—

17 “(1) IN GENERAL.—In order to verify a sub-
 18 scriber’s selection of a telephone exchange service or
 19 telephone toll service provider under this section, a
 20 telecommunications carrier or reseller shall, at a
 21 minimum, require the subscriber—

22 “(A) to affirm that the subscriber is au-
 23 thorized to select the provider of that service
 24 for the telephone number in question;

25 “(B) to acknowledge the type of service to
 26 be changed as a result of the selection;

1 “(C) to affirm the subscriber’s intent to
2 select the provider as the provider of that serv-
3 ice;

4 “(D) to acknowledge that the selection of
5 the provider will result in a change in providers
6 of that service; and

7 “(E) to provide such other information as
8 the Commission considers appropriate for the
9 protection of the subscriber.

10 “(2) ADDITIONAL REQUIREMENTS.—The proce-
11 dures prescribed by the Commission to verify a sub-
12 scriber’s selection of a provider shall—

13 “(A) provide for a complete copy of ver-
14 ification of a change in provider in oral, writ-
15 ten, or electronic form;

16 “(B) require the retention of such verifica-
17 tion in such manner and form and for such
18 time as the Commission considers appropriate;

19 “(C) require that verification occur in the
20 same language as that in which the change is
21 solicited; and

22 “(D) provide for a copy of the verification
23 to be made available to the subscriber con-
24 cerned on request.

25 “(3) PROTECTION OF FREEZE OPTION.—

1 “(A) PROTECTION.—The Commission may
2 not take action under this section to limit or
3 prevent a subscriber’s capability to require that
4 any change in the subscriber’s selection of a
5 provider of telephone exchange service or tele-
6 phone toll service not be carried out unless the
7 subscriber communicates the authorization for
8 the change to the subscriber’s service provider
9 in an express and direct manner.

10 “(B) PRESERVATION OF AUTHORITY RE-
11 LATING TO UNFAIR MARKETING OF FREEZE OP-
12 TIONS.—Nothing in this section shall be con-
13 strued to prohibit the Commission from pre-
14 venting the marketing or provision in an unfair
15 or anti-competitive manner of a capability to
16 preclude a change in a subscriber’s provider of
17 telephone exchange service or telephone toll
18 service without the subscriber’s affirmative con-
19 sent.

20 “(c) NOTICE TO SUBSCRIBERS OF CHANGES.—

21 “(1) IN GENERAL.—Whenever there is a change
22 in a subscriber’s selection of a provider of telephone
23 exchange service or telephone toll service, the tele-
24 communications carrier or reseller selected shall no-
25 tify the subscriber in a specific and unambiguous

1 writing, not more than 15 days after the change is
2 processed by the carrier or the reseller—

3 “(A) of the subscriber’s new carrier or re-
4 seller; and

5 “(B) that the subscriber may request in-
6 formation regarding the date on which the
7 change was agreed to and the name of the indi-
8 vidual who authorized the change.

9 “(2) RESPONSE TO REQUEST.—A carrier or re-
10 seller receiving a request under paragraph (1)(B)
11 shall submit to the subscriber concerned, not later
12 than 15 days after the date of the request, the infor-
13 mation covered by the request.

14 “(d) FORFEITURE AND LIABILITY FOR UNAUTHOR-
15 IZED CHANGES.—

16 “(1) FORFEITURE.—Unless the Commission de-
17 termines there are mitigating circumstances, viola-
18 tion of subsection (a) is punishable by a forfeiture
19 of not less than \$40,000 for the first offense, and
20 not less than \$100,000 for each subsequent offense.

21 “(2) SUBSCRIBER LIABILITY.—A subscriber
22 whose telephone exchange service or telephone toll
23 service is changed in violation of the provisions of
24 this section or the verification procedures under this
25 section shall not be liable to the telecommunications

1 carrier providing such service after the change, in
 2 accordance with such procedures as the Commission
 3 shall prescribe.

4 “(3) RECOVERY OF FORFEITURE AND LIABIL-
 5 ITY.—The Commission may take such action as may
 6 be necessary to collect any forfeitures imposed under
 7 paragraph (1).

8 “(4) CONSTRUCTION.—The remedies provided
 9 by paragraphs (1) and (2) are in addition to any
 10 other remedies available under law.

11 “(e) DISQUALIFICATION AND REINSTATEMENT.—

12 “(1) DISQUALIFICATION FROM CERTAIN ACTIVI-
 13 TIES BASED ON CONVICTION.—

14 “(A) DISQUALIFICATION OF PERSONS.—
 15 Subject to subparagraph (C), any person con-
 16 victed under section 2328 of title 18, United
 17 States Code, in addition to any fines or impris-
 18 onment under that section, may not carry out
 19 any activities covered by section 214.

20 “(B) DISQUALIFICATION OF COMPANIES.—
 21 Subject to subparagraph (C), any company sub-
 22 stantially controlled by a person convicted
 23 under section 2328 of title 18, United States
 24 Code, in addition to any fines or imprisonment

1 under that section, may not carry out any ac-
2 tivities covered by section 214.

3 “(C) REINSTATEMENT.—

4 “(i) IN GENERAL.—The Commission
5 may terminate the application of subpara-
6 graph (A) to a person, or subparagraph
7 (B) to a company, if the Commission de-
8 termines that the termination would be in
9 the public interest.

10 “(ii) EFFECTIVE DATE.—The termi-
11 nation of the applicability of subparagraph
12 (A) to a person, or subparagraph (B) to a
13 company, under clause (i) may not take ef-
14 fect earlier than 5 years after the date on
15 which the applicable subparagraph applied
16 to the person or company concerned.

17 “(2) CERTIFICATION REQUIREMENT.—Any per-
18 son described in subparagraph (A) of paragraph (1),
19 or company described in subparagraph (B) of that
20 paragraph, not reinstated under subparagraph (C)
21 of that paragraph shall include with any application
22 to the Commission under section 214 a certification
23 that the person or company, as the case may be, is
24 described in such subparagraph (A) or (B).

25 “(f) STATE LAW NOT PREEMPTED.—

1 “(1) IN GENERAL.—Nothing in this section
 2 shall be construed to preempt any State law that im-
 3 poses more restrictive requirements, regulations,
 4 damages, costs, or penalties on changes in a sub-
 5 scriber’s service or selection of a provider of tele-
 6 phone exchange service or telephone toll services
 7 than are imposed under this section.

8 “(2) EFFECT ON STATE COURT PROCEED-
 9 INGS.—Nothing in this section shall be construed to
 10 prohibit an authorized State official from proceeding
 11 in State court on the basis of an alleged violation of
 12 any general civil or criminal statute of such State or
 13 any specific civil or criminal statute of such State
 14 not preempted by this section.

15 “(g) REPORTS ON COMPLAINTS.—

16 “(1) REQUIREMENT.—Each local exchange car-
 17 rier shall submit to the Commission on a quarterly
 18 basis a report on the number of complaints of unau-
 19 thorized changes in providers of telephone exchange
 20 service or telephone toll service that are submitted to
 21 such carrier by its subscribers. Each report shall
 22 specify each provider of service complained of and
 23 the number of complaints relating to such provider.

24 “(2) LIMITATION ON SCOPE.—The Commission
 25 may not require any information in a report under

1 paragraph (1) other than the information specified
 2 in the second sentence of that paragraph.

3 “(3) UTILIZATION.—The Commission shall use
 4 the information submitted in reports under para-
 5 graph (1) to identify telecommunications carriers or
 6 resellers that engage in patterns and practices of un-
 7 authorized changes in providers of telephone ex-
 8 change service or telephone toll service.

9 “(4) TERMINATION AUTHORITY.—The Commis-
 10 sion may terminate the requirement in paragraph
 11 (1) upon a determination by the Commission that
 12 the number of complaints submitted to local ex-
 13 change carriers regarding the changes described in
 14 that paragraph has decreased by a significant
 15 amount.”.

16 (b) CRIMINAL PENALTY.—

17 (1) IN GENERAL.—Chapter 113A of title 18,
 18 United States Code, is amended by adding at the
 19 end the following:

20 **“§ 2328. Unauthorized changes in telephone exchange**
 21 **or telephone toll service**

22 “Any person who submits or executes a change in a
 23 provider of telephone exchange service or telephone toll
 24 service not authorized by the subscriber concerned in will-
 25 ful violation of the provisions of section 258 of the Com-

1 munications Act of 1934 (47 U.S.C. 258), or the proce-
 2 dures prescribed under subsection (a) of that section—

3 “(1) shall be fined in accordance with this title,
 4 imprisoned not more than 1 year, or both; but

5 “(2) if previously convicted under this section
 6 at the time of a subsequent offense, shall be fined
 7 in accordance with this title, imprisoned not more
 8 than 5 years, or both, for such subsequent offense.”.

9 (2) CLERICAL AMENDMENT.—The chapter anal-
 10 ysis for chapter 113A of title 18, United States
 11 Code, is amended by adding at the end the follow-
 12 ing:

“2328. Unauthorized changes in telephone exchange or telephone toll service.”.

13 **SEC. 3. CONSUMER PROTECTIONS AGAINST TELEPHONE**
 14 **BILLING CRAMMING.**

15 Part II of title II of the Communications Act of 1934
 16 (47 U.S.C. 251 et seq.) is amended by inserting after sec-
 17 tion 258 the following new section:

18 **“SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO**
 19 **TELEPHONE BILLING.**

20 “(a) PROHIBITION ON KNOWING SUBMISSION OF UN-
 21 AUTHORIZED CHARGES.—

22 “(1) IN GENERAL.—No person, including a bill-
 23 ing agent or telephone exchange service or telephone
 24 toll service provider, may cause a charge to be in-
 25 cluded on a subscriber’s bill for telephone exchange

1 service or telephone toll service unless such charge
2 has been specifically and knowingly authorized by
3 the subscriber or is otherwise authorized or required
4 by law.

5 “(2) SCOPE OF PROHIBITION.—The prohibition
6 in paragraph (1) shall apply to any submission of a
7 charge for purposes of the inclusion of the charge on
8 the bill of a subscriber, including the submission of
9 the charge to another entity by direct or indirect
10 means.

11 “(3) REGULATIONS.—The Commission may
12 prescribe regulations for purposes of carrying out
13 this subsection.

14 “(b) OBLIGATIONS OF BILLING AGENTS.—A billing
15 agent, including a telecommunications carrier or reseller
16 of telecommunications services, who issues a bill for tele-
17 phone exchange service or telephone toll service to a sub-
18 scriber shall—

19 “(1) state on the bill—

20 “(A) the name and toll-free telephone
21 number of any telecommunications carrier or
22 reseller for the subscriber’s telephone exchange
23 service and telephone toll service;

1 “(B) the identity of each presubscribed
2 carrier or reseller of telecommunications serv-
3 ices; and

4 “(C) the charges associated with each car-
5 rier’s or reseller’s provision of telecommuni-
6 cations service during the billing period;

7 “(2) for services other than services described
8 in paragraph (1), state on a separate page—

9 “(A) the name of any company whose
10 charges are reflected on the subscriber’s bill;

11 “(B) the services for which the subscriber
12 is being charged by that company;

13 “(C) the charges associated with that com-
14 pany’s provision of service during the billing pe-
15 riod;

16 “(D) the toll-free telephone number that
17 the subscriber may call to dispute that compa-
18 ny’s charges; and

19 “(E) that disputes about that company’s
20 charges will not result in disruption of tele-
21 phone exchange service or telephone toll service;
22 and

23 “(3) show the mailing address of any tele-
24 communications carrier or reseller or other company
25 whose charges are reflected on the bill.

1 “(c) ADDITIONAL REQUIREMENTS RELATING TO
2 BILLING.—

3 “(1) PROHIBITION ON DISRUPTION OF TELE-
4 PHONE SERVICE BASED ON DISPUTE OF CERTAIN
5 CHARGES.—A provider of telephone exchange service
6 or telephone toll service may not cease or otherwise
7 disrupt the provision of such service to a subscriber
8 in the event of the subscriber’s dispute of a charge
9 for any service other than telephone exchange service
10 or telephone toll service that is included on the sub-
11 scriber’s bill for such service.

12 “(2) TOLL-FREE NUMBER FOR DISPUTE OF
13 CERTAIN CHARGES.—Any provider of services cov-
14 ered by subsection (b)(2) shall ensure the availability
15 of a toll-free telephone number that a subscriber
16 issued a bill including a charge for such services
17 may call in order to resolve disputes relating to the
18 charge. Such number may be the number of the pro-
19 vider or the agent that issued the bill.

20 “(d) FORFEITURE FOR VIOLATIONS.—

21 “(1) FORFEITURE.—Unless the Commission de-
22 termines there are mitigating circumstances, viola-
23 tion of subsection (a) is punishable by a forfeiture
24 of not less than \$40,000 for the first offense, and
25 not less than \$100,000 for each subsequent offense.

1 “(2) RECOVERY.—The Commission may take
2 such action as may be necessary to collect any for-
3 feitures imposed under paragraph (1).

4 “(e) STATE LAW NOT PREEMPTED.—

5 “(1) IN GENERAL.—Nothing in this section
6 shall be construed to preempt any State law that im-
7 poses more restrictive requirements, regulations,
8 damages, costs, or penalties on the inclusion on sub-
9 scriber bills of charges for telephone exchange serv-
10 ice or telephone toll service than are imposed under
11 this section.

12 “(2) EFFECT ON STATE COURT PROCEED-
13 INGS.—Nothing in this section shall be construed to
14 prohibit an authorized State official from proceeding
15 in State court on the basis of an alleged violation of
16 any general civil or criminal statute of such State or
17 any specific civil or criminal statute of such State
18 not preempted by this section.

19 “(f) REPORTS ON COMPLAINTS.—

20 “(1) REQUIREMENT.—Each local exchange car-
21 rier shall submit to the Commission on a quarterly
22 basis a report on the number of complaints of the
23 inclusion of unauthorized charges on the bills of its
24 subscribers that are submitted to such carrier by its
25 subscribers. Each report shall specify the basis of

1 each charge complained of and the number of com-
 2 plaints arising from such basis.

3 “(2) LIMITATION ON SCOPE.—The Commission
 4 may not require any information in a report under
 5 paragraph (1) other than the information specified
 6 in the second sentence of that paragraph.

7 “(3) UTILIZATION.—The Commission shall use
 8 the information submitted in reports under para-
 9 graph (1) to identify telephone exchange service and
 10 telephone toll service providers that engage in pat-
 11 terns and practices of including unauthorized
 12 charges in their bills for such service.

13 “(4) TERMINATION AUTHORITY.—The Commis-
 14 sion may terminate the requirement in paragraph
 15 (1) upon a determination by the Commission that
 16 the number of complaints submitted to local ex-
 17 change carriers regarding the inclusion of charges
 18 described in that paragraph has decreased by a sig-
 19 nificant amount.”.

20 **SEC. 4. FEDERAL COMMUNICATIONS COMMISSION JURIS-**
 21 **DICTION OVER TELEPHONE SERVICE BILL-**
 22 **ING PROVIDERS AND CERTAIN OTHER SERV-**
 23 **ICE PROVIDERS.**

24 Part II of title II of the Communications Act of 1934
 25 (47 U.S.C. 251 et seq.), as amended by section 3(a) of

1 this Act, is further amended by inserting after section
2 258A the following new section:

3 **“SEC. 258B. JURISDICTION OVER TELEPHONE SERVICE**
4 **BILLING PROVIDERS AND CERTAIN OTHER**
5 **SERVICE PROVIDERS.**

6 “(a) IN GENERAL.—Subject to subsections (b) and
7 (c), the Commission may assess and recover any penalty,
8 fine, or forfeiture provided for under this Act and may
9 impose any other sanction provided for under this Act (in-
10 cluding an order to cease and desist under section 312(b))
11 against any entity that is not a telecommunications carrier
12 for a violation of or failure to comply with any provision
13 of this Act, or any rule, regulation, or order under this
14 Act, to the extent that such entity—

15 “(1) provides billing services for the provision
16 of telephone exchange service or telephone toll serv-
17 ice;

18 “(2) provides billing services for services for
19 which charges appear on a subscriber’s bill for tele-
20 phone exchange service or telephone toll service; or

21 “(3) provides services for which charges appear
22 on a subscriber’s bill for telephone exchange service
23 or telephone toll service.

24 “(b) LIMITATION.—The Commission may not exer-
25 cise the authority in subsection (a) with regard to an en-

1 tity unless the Commission determines that the entity has
 2 willfully or knowingly violated or failed to comply with a
 3 provision of this Act or a rule, regulation, or order under
 4 this Act.

5 “(c) ENFORCEMENT ACTIONS.—

6 “(1) IN GENERAL.—The Commission may un-
 7 dertake any action provided for under this Act for
 8 purposes of the enforcement of a penalty, fine, for-
 9 feiture, or other sanction under subsection (a).

10 “(2) CERTAIN FORFEITURE ACTIONS.—In de-
 11 termining and imposing a forfeiture penalty under
 12 section 503(b) utilizing the authority in subsection
 13 (a), the Commission shall not be subject to the re-
 14 quirements set forth in paragraph (5) of such sec-
 15 tion.”.

16 **SEC. 5. FEDERAL TRADE COMMISSION JURISDICTION OVER**
 17 **UNFAIR OR DECEPTIVE PRACTICES OF TELE-**
 18 **COMMUNICATIONS CARRIERS.**

19 Section 5(a) of the Federal Trade Commission Act
 20 (15 U.S.C. 45(a)) is amended by adding at the end the
 21 following:

22 “(4) Notwithstanding the exception in paragraph (2),
 23 the Commission is empowered to prevent telecommuni-
 24 cations carriers (as that term is defined in section 3(44)
 25 of the Communications Act of 1934 (47 U.S.C. 153(44)))

1 from using unfair or deceptive acts or practices in or af-
 2 fecting commerce. The power of the Commission under
 3 this paragraph is in addition to any power or authority
 4 of the Federal Communications Commission over tele-
 5 communications carriers under the Communications Act
 6 of 1934.”.

7 **SEC. 6. PROVISION TO FEDERAL TRADE COMMISSION OF**
 8 **FEDERAL COMMUNICATIONS COMMISSION**
 9 **INFORMATION ON TELEPHONE SERVICES**
 10 **FRAUD.**

11 (a) REQUIREMENT.—Part II of title II of the Com-
 12 munications Act of 1934 (47 U.S.C. 251 et seq.) is
 13 amended by adding at the end the following:

14 **“SEC. 262. PROVISION TO FEDERAL TRADE COMMISSION OF**
 15 **FEDERAL COMMUNICATIONS COMMISSION**
 16 **INFORMATION ON TELEPHONE SERVICES**
 17 **FRAUD.**

18 “Not later than 180 days after the date of the enact-
 19 ment of the Telephone Services Fraud Prevention and En-
 20 forcement Act of 1999, and every month thereafter, the
 21 Commission shall provide to the Federal Trade Commis-
 22 sion any information collected by the Commission as a re-
 23 sult of complaints to the Commission regarding telephone
 24 services fraud, including the following:

1 “(1) The submission or execution of an unau-
 2 thorized change of provider of telephone exchange
 3 service or telephone toll service.

4 “(2) The inclusion on a subscriber’s bill for
 5 telephone exchange service or telephone toll service
 6 of a charge that has not been specifically and know-
 7 ingly authorized by the subscriber concerned or oth-
 8 erwise authorized or required by law.”.

9 (b) TREATMENT OF INFORMATION.—The Federal
 10 Trade Commission shall incorporate in an appropriate
 11 manner into the Consumer Sentinel online database main-
 12 tained by that Commission any information provided to
 13 that Commission under section 262 of the Communica-
 14 tions Act of 1934, as added by subsection (a).

15 **SEC. 7. STUDY OF CONSUMER BILLING CONTROLS RELAT-**
 16 **ING TO TELEPHONE BILLS.**

17 (a) REQUIREMENT.—The Federal Communications
 18 Commission shall carry out a study of the feasibility and
 19 advisability of requiring telephone service billing agents,
 20 including telecommunications carriers who issue bills for
 21 telephone exchange service or telephone toll service, to es-
 22 tablish and provide consumer billing controls in order to
 23 permit subscribers to prevent the inclusion of unauthor-
 24 ized charges on bills for telephone service.

1 (b) CONSULTATION.—In carrying out the study, the
2 Commission shall consult with the Federal Trade Commis-
3 sion, representatives of telecommunications carriers pro-
4 viding telephone exchange service or telephone toll service,
5 State commissioners, and consumers of telephone service.

6 (c) REPORT.—The Federal Communications Com-
7 mission shall submit to Congress a report on the results
8 of the study not later than 6 months after the date of
9 the enactment of this Act.

○